

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

MICHAEL MCKENZIE, individually and)	
doing business as AMERICAN IMAGE ART,)	
an unincorporated dba,)	
)	
Plaintiff,)	Civil Action No.: 2:20-cv-00262-NT
)	
v.)	
)	
JAMES W. BRANNAN, as personal)	
representative of THE ESTATE OF ROBERT)	
INDIANA, and AARON M. FREY, only in his)	
official capacity as Attorney General of the)	
State of Maine)	
)	
Defendants.)	

JOINT STIPULATION OF FACTS

1. Robert Indiana was a painter, sculptor, and visual artist who died on May 19, 2018.
2. Prior to his death, Robert Indiana resided on the island of Vinalhaven, Maine.
3. James Brannan is an attorney licensed to practice in the State of Maine. His principal place of business is in Rockland, Maine.
4. On May 7, 2016, Robert Indiana executed a Last Will and Testament that had been prepared by James Brannan at Indiana's direction.
5. Robert Indiana's Last Will and Testament named Star of Hope, Inc. ("Star of Hope") as the sole beneficiary of Indiana's estate. Star of Hope is a Maine charitable corporation formed at Indiana's direction during his lifetime. Its stated mission includes the promotion of Indiana's artistic legacy.
6. Simultaneous with the execution of his Last Will and Testament on May 7, 2016, Robert Indiana executed a document authorizing Jamie Thomas, a local Vinalhaven resident, to act as power of attorney on Robert Indiana's behalf.

7. On May 25, 2018, the Probate Court for Knox County, Maine appointed James Brannan as the Personal Representative of Robert Indiana's estate ("Brannan" or "the Estate").

8. Michael McKenzie is an art publisher who does business as American Image Art.

9. Michael McKenzie's residence and principal place of business is in Katonah, New York.

10. American Image Art ("AIA") is a sole proprietorship and does not have any corporate form.

11. On or about August 11, 2008, McKenzie, and Indiana both signed an agreement titled "Agreement for Art Editions." Joint Exhibit 1, pages 1 to 6 is a true and correct copy of that agreement.

12. The HOPE Agreement granted McKenzie the right to produce and sell certain two- and three-dimensional artworks based upon the *HOPE* design, in colors, media, sizes, and editions specified by Indiana. An example of the *HOPE* design, as silkscreen printed on canvas by McKenzie, is depicted below.



13. In addition to the original HOPE Agreement, on or about September 28, 2010 McKenzie and Indiana both signed an agreement titled "Robert Indiana/American Image: Addendum to Hope Contract"; on or about September 1, 2011, McKenzie and Indiana both signed an agreement titled "Addendum to Hope Contract"; on or about October 4, 2011,

McKenzie and Indiana both signed an agreement titled “Hope Wine”; and on or about March 31, 2012, McKenzie and Indiana both signed an agreement titled “Addendum to Agreement.” A true and accurate copy of each of these agreements is included behind the HOPE Agreement in Joint Exhibit 1.

14. Except for the agreements identified in Joint Exhibit 1, there were no other signed, written agreements between Indiana and McKenzie from August 11, 2008 to Indiana’s death on May 19, 2018.

15. On May 18, 2018, Morgan Art Foundation Ltd. filed an action in the U.S. District Court in the Southern District of New York against Michael McKenzie, American Image Art, Jamie Thomas, and Robert Indiana entitled *Morgan Art Foundation Limited v. Michael McKenzie, American Image Art, Jamie Thomas, and Robert Indiana*, Case No. 1:18-cv-4438-AT-BCM (“the SDNY Action”). After Robert Indiana’s death, James Brannan, as personal representative of the Estate of Robert Indiana, became a defendant in that case.

16. On August 3, 2018, McKenzie and AIA filed cross-claims against James Brannan in the SDNY Action.

17. On October 9, 2018, the court in the SDNY Action ruled that the claims between Michael McKenzie/AIA and James Brannan should proceed in arbitration, and an arbitration was commenced in New York entitled *James W. Brannan v. Michael McKenzie and American Image Art*, Case No. 01-19-001-9789 (“the New York Arbitration”).

18. In the New York Arbitration, which was filed in 2019, both the Estate and McKenzie/AIA asserted claims against each other; McKenzie/AIA filed their counterclaims on August 22, 2019.

19. On May 9, 2019, Brannan (in his capacity as Personal Representative of Indiana’s Estate) sent by email and first-class mail, and McKenzie received, a notice of termination letter stating that all agreements between Indiana and McKenzie had been terminated. Joint Exhibit 3 is a true and correct copy of that letter.

20. The Maine Attorney General has oversight authority over Maine charitable institutions and non-profits, including the sole beneficiary of Indiana's will, Star of Hope.

21. In its oversight capacity over Star of Hope, the Attorney General expressed concern that mounting costs of the SDNY Action and the New York Arbitration could impair the future of Star of Hope and urged the parties to mediate their disputes.

22. On November 25 and 26, 2019, McKenzie and Brannan attended a mediation conducted by Patrick Coughlan in Portland, Maine. Also present at this mediation were personnel and legal counsel representing Jamie Thomas, Morgan Art Foundation Ltd., Star of Hope, and the Attorney General of the State of Maine. McKenzie's attorney, John Simoni, was not present at the mediation.

23. On November 26, 2019, near the conclusion of the mediation session in Portland, Maine, Brannan and McKenzie signed a term sheet titled "Confidential and Binding Term Sheet Between Michael McKenzie, individually, and as agent of American Image Art (together "AIA") and the Estate of Robert Indiana (the "Estate")." Joint Exhibit 2 is a true and correct copy of that term sheet.

Date: July 11, 2022

Respectfully submitted,

/s/ John J.E. Markham, II

John J.E. Markham, II
Bridget A. Zerner
MARKHAM READ ZERNER LLC
908 Maine Street
Waldoboro, Maine 04572
Tel: (207) 790-8049
and
One Commercial Wharf West
Boston, Massachusetts 02110
Tel: (617) 523-6329
Fax: (617) 742-8604
jmarkham@markhamreadzerner.com
bzerner@markhamreadzerner.com
Attorneys for Michael McKenzie

/s/ Christina Moylan

Christina Moylan
Assistant Attorney General
Office of the Attorney General
6 State House Station
Augusta, Maine 04333-0006
Tel: 207-626-8838
christina.moylan@maine.gov

/s/ Seth W. Brewster

Seth W. Brewster
Eaton Peabody
100 Middle Street
P.O. Box 15235
Portland, Maine 04112-5235
Tele: 207.274.5266
Direct Dial: 207.430.8807
Fax: 207.274.5286
sbrewster@eatonpeabody.com
Attorneys for the Estate of Robert Indiana

CERTIFICATE OF SERVICE

I, Bridget A. Zerner, do hereby certify that on July 11, 2022, I served a copy of the foregoing on all counsel of record via the CM/ECF filing system.

/s/ Bridget A. Zerner
Bridget A. Zerner